Supreme Court, U.S.
FILED
APR 16 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1219

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN H. LARY, JR.,
Petitioner,

v.

THE REPUBLIC OF CHINA, a foreign government,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION

THOMAS G. CORCORAN, JR.
(*Counsel of Record*)
GAIL FREY BORDEN
CORCORAN, YOUNGMAN & ROWE
Suite 1100
1511 K Street, N.W.
Washington, D.C. 20005
(202) 783-7900
Counsel for Respondent

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1219

JOHN H. LARY, JR.,

Petitioner,

v.

THE REPUBLIC OF CHINA, a foreign government,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

REASONS WHY THE PETITION SHOULD BE DENIED

I. Issues raised for the first time in a petition for rehearing to the Circuit Court which was summarily denied should be treated like issues not raised in the lower courts at all.

Petitioner correctly represents in his reply brief (p. 5), contrary to Respondent's representation in its brief in opposition (p. 5), that Petitioner argued before the Eleventh Circuit (1) that the decision of the District Court violated the Eminent Domain Clause of the Constitution, and (2) that the Executive Branch exceeded its Constitutional authority by supporting defendant's position in *Jackson* v. *People's Republic of China*, 596 F. Supp. 386 (1984), aff'd 794 F.2d 1490 (11th Cir. 1986), *cert. denied* March 9, 1987 (No.

86-909). Petitioner failed to make these arguments, however, until his petition for rehearing and suggestion for rehearing *en banc* to the Eleventh Circuit.[1]

The same argument for denying certiorari nevertheless applies. The Eleventh Circuit upheld the District Court's decision on the ground the District Court gave for dismissal, *viz.*, the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1602, *et seq.*, does not apply retroactively to events or transactions before its date of passage. Accordingly, there was no reason why Petitioner could not have presented these arguments in his principal brief to the Circuit Court. Petitions for rehearing are "not favored. . . ." (Rule 35(a) F.R.A.P.), and this one was denied without opinion. For purposes of the rule that "ordinarily, this Court does not decide questions not raised or involved in the lower court," *Youakim* v. *Miller*, 325 U.S. 231, 234 (1976), we respectfully submit, issues raised for the first time on a petition for rehearing before the Circuit Court where there was no reason why the argument could not have been presented in appellant's principal brief and where the petition was summarily denied, should be treated similarly to issues not raised or involved in the lower court at all.

---

[1] There was no mention in the petition for rehearing, however, of the 1913 Lung-Tsing-U-Hai Bonds.

CONCLUSION

For these supplemental reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS G. CORCORAN, JR.
(Counsel of Record)
GAIL FREY BORDEN
CORCORAN, YOUNGMAN & ROWE
Suite 1100
1511 K Street, N.W.
Washington, D. C. 20005
(202) 782-7900